

---

In the ORS 656.245 Medical Services Dispute of

**Joann L. Goodsell, Claimant**

Contested Case No: 06-152H

**FINAL ORDER**

May 31, 2007

JOANN L. GOODSELL, Petitioner

OIGA FOR FREMONT INDEMNITY COMPANY, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

---

Petitioner claimant, through her attorney Christopher D. Moore, timely filed exceptions to Workers' Compensation Board Administrative Law Judge (ALJ) Robert Pardington's March 8, 2007 Proposed and Final Order. Respondent employer, through its attorney Patrick D. Gilroy, timely responded. This matter comes before the director for a final order. The issue is palliative care. I affirm.

I adopt the facts as found by the Medical Review Unit (MRU) and adopted by ALJ Pardington.

The underlying issue is whether claimant is entitled to physical therapy provided from May 15, 2006 through June 7, 2006 as palliative care. MRU, in its September 11, 2006 Administrative Order, found that physical therapy was ordered and approved for eight weeks beginning on January 30, 2006 and continuing until March 30, 2006. MRU further found that any physical therapy provided after that date required a new palliative care request, which was not done. MRU therefore concluded that the physical therapy provided between May 15, 2006 and June 7, 2006 was not compensable or reimbursable.

ALJ Pardington affirmed, finding that substantial evidence supports the finding that palliative care was requested and approved for a maximum of eight weeks and there was no further palliative care request. The ALJ modified MRU's order with respect to the beginning and ending of the eight-week period, finding that it began on March 7, 2006, the first date of treatment, and ended on May 2, 2006.

Claimant disagrees that treatment was authorized for a consecutive eight-week period; rather, Dr. Colorito authorized six to eight weeks of treatment. According to claimant, when employer stopped paying for treatment on May 4, 2006 she had only received two weeks of treatment, when six to eight weeks of treatment had been authorized. She was therefore not required to submit a new palliative care request. Claimant further contends that the only time limitation contained in the rules is that a treatment plan may not exceed 180 days.

Employer responds that because the duration of treatment authorized here was only six to eight weeks, the 180-day limit on palliative care requests does not apply. According to employer, claimant needed to submit a new palliative care request when it became apparent that she would not be able to complete the treatment within eight weeks.

The parties dispute the interpretation of Dr. Colorito's request. His November 4, 2005

letter states that physical therapy “can be done once to twice per week for a duration of 6-8 weeks.” The treatment would include functional training and strengthening. Employer authorized physical therapy “two times per week for six to eight weeks.” I find MRU’s conclusion that treatment was authorized for an eight-week period is supported by substantial evidence in the record.<sup>1</sup> “Duration” means “1 : continuance in time 2 : the time during which something exists or lasts.”<sup>2</sup> It is a reasonable interpretation of Dr. Colorito’s request, and employer’s authorization, that physical therapy was to be provided over a six-to-eight week period of time. Under claimant’s interpretation, the physical therapy could have been provided once or twice a week every three weeks or more, as long as eight weeks’ worth of treatment was completed within 180 days. It’s hard to see how the treatment would result in successful functional training and strengthening when provided on such a sporadic basis.

OAR 436-010-0290(1)(a)(C)<sup>3</sup> provides that a palliative care request must “[d]etail a treatment plan which includes the name of the provider who will render the care, specific treatment modalities, and frequency and duration of the care, not to exceed 180 days[.]” The rule provides a maximum duration of palliative care; it does not allow more treatment than what is requested and authorized.

Palliative care was only authorized through May 4, 2006. A new palliative care request needed to be submitted for any care provided after that date. No such request was submitted. Therefore, employer is not liable for physical therapy provided between May 15, 2006 and June 7, 2006.

**IT IS THEREFORE ORDERED** that the March 8, 2007 Proposed and Final Order is affirmed.

---

<sup>1</sup> “Substantial evidence exists to support a finding in the order when the record, reviewed as a whole, would permit a reasonable person to make that finding.” ORS 656.327(1)(b).

<sup>2</sup> [www.m-w.com](http://www.m-w.com)

<sup>3</sup> As adopted by WCD Admin. Order 05-071, effective 1/1/06. The prior rule, effective 4/1/05, was numbered OAR 436-010-0290(1)(c). The language was not changed.